IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30/04/2003

CORAM

THE HONOURABLE MR. JUSTICE K.P.SIVASUBRAMANIAM

CIVIL REVISION PETITION No.2717 of 1997

Peerammal Beevi .. Petitioner

-Vs-

V.Chinnasamy Nicker .. Respondent

The Revision Petition is preferred against the order and decree passed in RCA No.282 of 1994 dated 30.7.1997 on the file of the Rent Control Appellate Authority/VIII Small Causes Court, Madras, setting aside the order and decretal order dated 24.12.1993 in RCOP No.2650 of 19 91 on the file of the Rent Controller/12th Small Causes Court, Madras.

!For Petitioner : Mr.M.Venkatachalapathy
Senior Counsel for
M/s.M.Sriram and D.Rajendran.

^For Respondent : Mr.Venkatapathy,
Senior Counsel for
M/s.P.Wilson and
K.V.Sundararajan

:ORDER

This revision is directed against the order of appellate authority under Rent Control Act, Court of Small Causes, Madras in RCA No.282 of 1994 in reversing that of the Rent Control Act in RCOP No.2650 of 1991. The landlord is the revision

2. The petition was filed under Section 14 (1) (b) of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960. The revision petitioner claims to be the landlady of the premises. The said property was let on a monthly rent of Rs.400/- and for a further sum of Rs.100/- towards amenities for non-residential purpose. The tenant was also liable to pay monthly electricity consumption charges separately. The tenant was using the petitioner-premises as a godown for storing plantain for his business. Originally, the father-in-law of the respondent was the tenant in the year 1976. Pursuant to rental agreement dated 29.4.1996, the tenancy was subsequently renewed. The respondent became the tenant after his father-in-law died. The landlady further contended that the petitioner-premises was an old building and was in a very bad and dilapidated

condition. As a matter of fact, the premises consists of a front wall with a door and a wall in the rear portion and it has no side walls and the same consists of a roof. The roof is in a very bad stage and damaged condition. The premises therefore requires immediate demolition and reconstruction. The landlord also seeks to make use of the premises for more profitable use and therefore requires for bona fide reasons to demolish and reconstruct. The petitioner also has taken steps to obtain sanction of plans and she has sufficient means for the proposed reconstruction. By notice dated 13.9.1991, the petitioner called upon the respondent to surrender possession, which was however evaded by the tenant. The copy of the said notice was also sent under Certificate of Posting and there is no reply from the tenant.

3. In the counter affidavit by the respondent-tenant, it is stated that the premises does not require any immediate demolition and the petition-premises is used as a godown and the same does not have any roof. The premises were in the same condition as it was leased out to the father-in-law of the respondent. The petitioner has no intention of demolishing or reconstructing the premises and she plans only to sell the property for the huge price and number of brokers were visiting the property with prospective purchasers. The claim was therefore not bona fide.

4. On a consideration of the said submissions and pleadings, the learned Rent Controller found that both the land and the superstructure had been leased out and that the case of the tenant that only the land was leased out cannot be sustained. He also found that the superstructure was in a very dilapidated condition and that the landlord had sufficient means to put up a new construction and therefore the requirement was bona fide. On appeal by the tenant, the appellate authority though confirmed the findings of the Rent Controller that the superstructure had been put up only by the landlord and not the tenant and also that the landlady had sufficient means to put up the proposed construction, however, came to the conclusion that the nature of the superstructure did not justify the claim. Therefore there was no building required for demolition and reconstruction and that the said claim was not bona fide.

5. Mr.M.Venkatachalapathy, learned Senior Counsel appearing for the landlady contends that the appellate authority having found that the lease in favour of the respondent was inclusive of the superstructure, could not have justifiably rejected the prayer for demolition and reconstruction, having regard even to the admitted facts relating to the nature of the superstructure and the very bad shape in which the superstructure remain.

6. Learned Senior Counsel also relied on the judgment of AR. LAKSHMANAN, J, as he then was in Dr.M.R.Srinivasan vs. V.Balakrishnan (1997-2-L.W.720), by placing reliance on the observations that when the premises were given a door number and house tax has also been collected, it could only mean that it was a building. No door number will be given for a vacant land and any tax on vacant land will be shown only as land tax and not as house tax. By placing reliance on the said judgment, the learned Senior Counsel contends that there are materials to show that the landlady was paying tax on buidlings.

7. Reference is also made to the judgment of NAINAR SUNDARAM, J., as he then was in THANGAKANI AMMAL vs. A.K.A.KHAJA MOHIDEEN SAHIB (199 1 L.W. 659). In that case, the learned Judge came to the conclusion that the demised property was not a building, due to the fact that apart from the side walls, there was no superstructure/building.

8. Mr.Venkatapathy, learned Senior Counsel for the tenant contends that the appellate authority had on the basis of detailed analysis of the evidence, had come to a proper conclusion that there was no building within the meaning of the definition of "Building" in the Act and that the claim of the landlady was not bona fide. Such a finding of fact did not warrant any interference in a revision under Section 2 5 of the Act.

9. Learned Senior Counsel also fairly contended that though it is open to the respondent to sustain the order of the appellate authority even on the grounds found against him, namely, that there was no lease of any building and that the lease was only in respect of the land alone, he was not pressing the same. There is clear evidence to show that apart from the side walls, there was no building worth mentioning. Reference is also made to the pleading of the landlady herself to the effect that the building contains only a front wall with a door and wall in the rear portion and without any side walls. The said pleadings are sufficient to establish that what was demised was not a building.

10. Reference is made to the judgment of a Division Bench of this Court in THE OFFICIAL TRUSTEE OF MADRAS vs. UNITED COMMERCIAL SYNDICATE (1955 MLJ 220), relying on the observation that the evidence was not clear as to the existence of a compound wall and two latrines in the lease.

11. Learned Senior Counsel also relies on the judgment, which was cited on behalf of the petitioner and reported in 1991 L.W. 659 supra and relies on the observation that unless and otherwise the demised property is a building within the meaning of the Act, no relief can be granted in favour of the landlady.

12. In answer to the criticism that the pleadings of the tenant was bereft of details, learned Senior Counsel contends that in Rent Control proceedings, the pleadings need not be construed with the same strictness, in the same manner as in civil suits. Reliance is placed on the judgment of learned single Judge of this Court in RUTH MARGARET GONSALVES vs. K.T.H. PRESSES BY ITS PROPRIETOR, KUMAR (100 LW 258).

13. I have considered the submissions of both sides.

14. The manner in which the appellate authority had dealt with the issue leaves much to be said about the provisions of the Rent Control Act, being utilised in an improper manner by unreasonable tenants and unrealistic and perverted approach by some of the Courts. The appellate Court had agreed with the finding of the Rent Controller that the lease included superstructure also and rejected the false claim of the tenant that only a

vacant land was leased out. The appellate authority had also confirmed the finding that the landlady was possessed with sufficient funds. That being so, the finding that there was no pucca building and that the requirement was not bona fide is perverse and conflicting with his own finding that the lease included superstructure also.

15. It is true that a mere wall may not be a building but the evidence of the Engineer, P.W.2 examined on the side of the landlady, which has also been accepted by the appellate authority and his report Ex.P.18 filed by him clearly bring out the details of the superstructure. There is positive evidence to show that there was a thatched roofing and the roof was supported by pucca wooden rafters. Apart from the walls on the front and back, there are granite pillars supporting the roofing material. Therefore the fact that there is a roof is clearly established which is no doubt in a worn-out condition. The evidence of the Engineer has also been accepted by the appellate authority. That being so, the further finding by the appellate authority that the existence of two walls alone will not make it a building, is inconsistent with the definition of "Building" under Section 2(2) of the Act. Building is defined as any building or hut or a part of a building or hut, let or to be let separately for the residential or non-residential purposes.

16. Therefore even a hut can be a building and it is a matter of common knowledge that huts contain roof by thatched leaf. It is not necessary that the roofing should be only by pucca RC material.

17. In A.N.SRINIVASA THEVAR vs. SUNDARAMBAL ALIAS PREMA W/o. CHANDRAKUMAR (1995-2-L.W.14), the roofing consisted of Asbestos sheet and it was construed to be a building.

18. A construction with four poles with zinc roofing was also held to come under the definition in T.M.A. ABDUL AZIZ vs. VENKATACHALAM PILLAI (1952-1-MLJ 836).

19. In SURYAKUMAR GOVINDJEE vs. KRISHNAMMAL (1991 1 MLJ SC 21), it was held that even a "kaichalai" will be a superstructure, which will fall within the purview of the definition.

20. Therefore, even apart from the judgments cited above, the very definition would include even a hut as a building. In the present case, there is overwhelming evidence to show that the thatched roofing was supported by wooden rafters, granite pillars and walls on the front and rear side. There is no need that there should be pucca construction on all the four sides. The landlady had fairly stated the truth as regards the real condition of the building viz., it contains only front wall with a door and a wall in the rear portion. As stated earlier, when the definition of building would include even a hut or cottage, it is erroneous to hold that the premises in this case cannot be construed as a building.

21. In the judgment reported in 1991 LW Page 659 which is relied on by the learned counsel for the petitioner, in paragraph-10, the

learned Judge has observed that admittedly by the landlord himself, the structure did not have any roofing. Therefore, the said judgment cannot apply to the facts of the present case in which the existence of roofing is clearly established by the evidence on the side of the landlady.

22. In the above back ground, it is idle to contend that the demised premise was not a building within the meaning of Section 2(2) of the Act.

23. It is also a settled proposition of law that it is within the discretion of the landlord, to utilise the premises to the best of his advantage and to augment better income from the property. A landlord cannot be prevented from making use of the property by pulling down the dilapidated structure and to utilise the property in a better manner by putting up a pucca construction. The provisions of the Act are not intended merely to protect the tenants who would choose to squat on the property and exploit the same and would not permit the landlord to make better use of the property.

24. Therefore, I am inclined to hold that the order of appellate authority is vitiated by perversity and inconsistency and is liable to be set aside.

25. The CRP is allowed. No costs. CMP No.14070 of 1997 is closed.

30-04-2003

K.P.SIVASUBRAMANIAM, J.

The learned counsel for respondent seeks time to vacate the premises. The respondent is given three weeks time to vacate the premises subject to filing an affidavit of undertaking within a period of one month.

30-04-2003

Index : Yes.
Internet: Yes.
Svn/Sg

To
1.The Rent Control Appellate
Authority/VIII Small Causes Court,
Madras

2.The Rent Controller/12th
Small Causes Court, Madras.